

12

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 611.

THE UNITED STATES, PLAINTIFF IN ERROR,

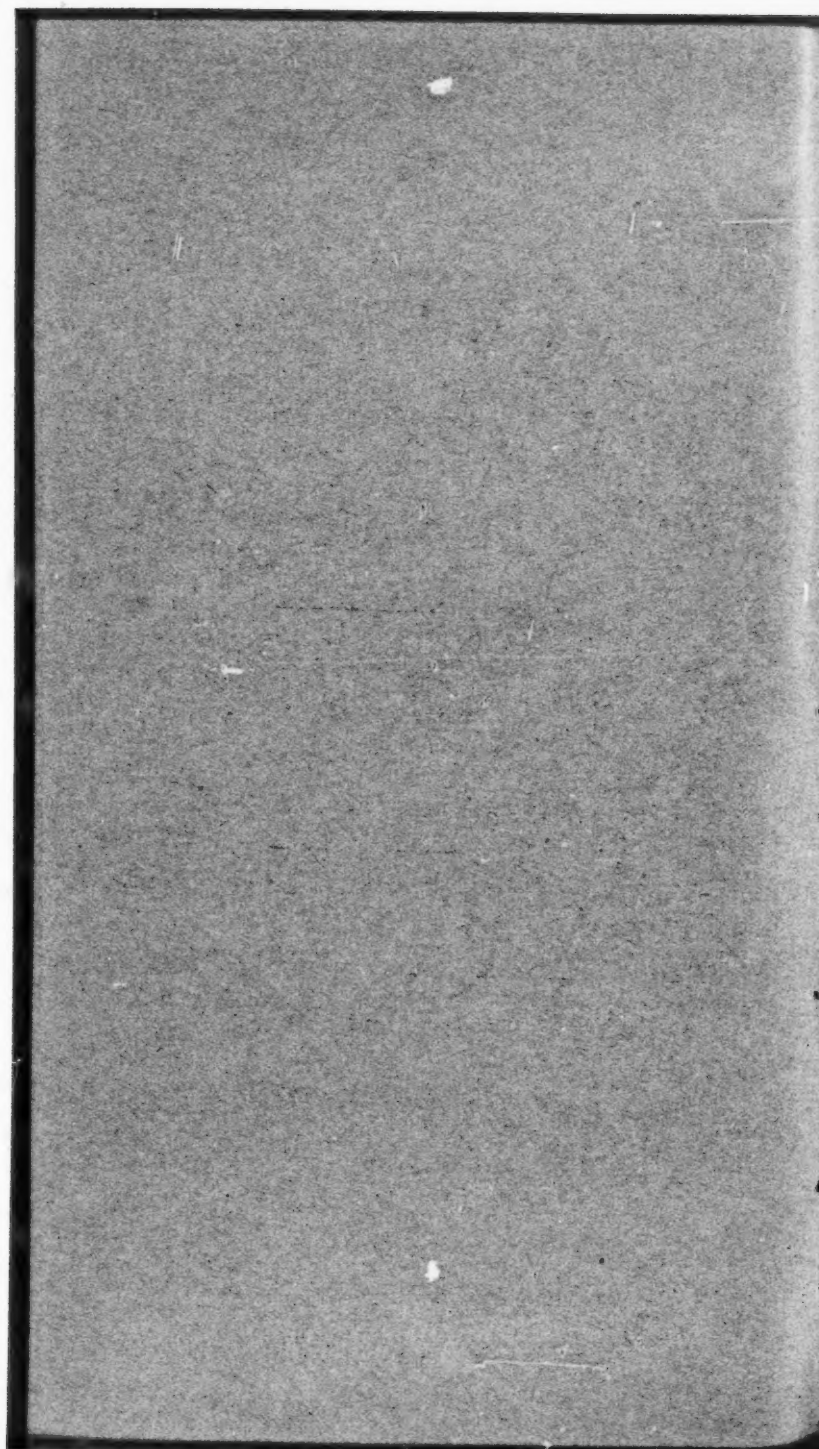
VS.

NORD DEUTSCHER LLOYD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 20, 1911.

(22687)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 611.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

NORD DEUTSCHER LLOYD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Petition for writ of error	1	1
Writ of error	2	1
Clerk's certificate and return	3	2
Indictment	5	2
Demurrer	9	5
Opinion	10	5
Order sustaining demurrer	17	9
Judgment	18	10
Assignment of errors	19	10
Citation	22	12
Acceptance of service of citation	23	12



Petition for writ of error.

United States Circuit Court, Southern District of New York.

THE UNITED STATES }
v. }
NORD DEUTSCHER LLOYD. }

Now comes the United States of America by its attorney, Henry A. Wise, and complains that in the record and proceedings had in this cause and in the judgment sustaining the demurrer to the indictment filed herein against the above-named defendant and dismissing the said indictment, manifest error hath happened, as will appear in the assignment of errors herewith submitted.

Wherefore the United States of America prays for the allowance of a writ of error and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated, New York, May 4, 1911.

HENRY A. WISE,
United States Attorney, Southern District of New York,
Attorney for Petitioner.

(Indorsed:) Service of a copy of the within hereby admitted. New York, May 5, 1911. Choate & Larocque, attorneys for defendant. U. S. Circuit Court, Southern District N. Y. Filed May 5, 1911. John A. Shields, clerk.

2 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the Circuit Court of the United States for the Southern District of New York, in the second circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court of the United States for the Second Circuit in the Southern District of New York, before you or some of you, between the United States of America and Nord Deutscher Lloyd, a manifest error hath happened to the great damage of the said United States of America, as by its complaint appears,

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf,

Do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done

3 therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the 5th day of May, 1911.

[SEAL.]

JOHN A. SHIELDS,
*Clerk of the United States Circuit Court,
Southern District of New York.*

Allowed by

LEARNED HAND,
U. S. Judge for the Second Circuit.

UNITED STATES OF AMERICA, *Southern District of New York*, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the pages numbered from one to 23, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of the United States, plaintiff in error, vs. Nord Deutscher Lloyd, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 12th day of May, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States the one hundred and thirty-fifth.

JOHN A. SHIELDS, *Clerk.*

4 (Indorsed:) (Original.) U. S. Circuit Court, Southern District of New York. The United States versus Nord Deutscher Lloyd. Writ of error. 3—332. E. & A. D. 3239. Henry A. Wise, United States attorney, attorney for petitioner. Service of a copy of the within is hereby admitted. New York, May 5, 1911. Choate & Larocque. U. S. Circuit Court, Southern District, N. Y. Filed May 5, 1911. John A. Shields, clerk.

5 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

At a stated term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, begun and held in the city of New York, within and for the district and circuit aforesaid, on the first Monday of January, in the year of our Lord one thousand nine hundred and eleven, and continued by adjournment to and including the third day of March, in the year of our Lord one thousand nine hundred and eleven.

SOUTHERN DISTRICT OF NEW YORK, ss.:

The jurors of the United States of America within and for the district and circuit aforesaid on their oath present that the "Nord Deutscher Lloyd," named as defendant herein, at the times herein-after mentioned was and still is a corporation duly organized and existing under and by virtue of the laws of the city of Bremen, in the Empire of Germany, and was maintaining an office and doing business in the said city and county of New York, in the Southern District of New York, and owned, operated, and managed a trans-Atlantic line of steamers and was engaged in the transportation of passengers and freights to and fro across the Atlantic Ocean, from Germany aforesaid to this country, that is to say, the United States of America, at the port and Southern District of New York.

That on the sixteenth day of December, in the year of our Lord one thousand nine hundred and ten, the said corporation, in the course of its said business, transported and brought into the United States aforesaid, at the port and Southern District of New York, two certain aliens in and upon the steamship "Rhein," of which steamship the said "Nord Deutscher Lloyd," defendant, then and there was the owner, the names of said aliens, respectively, being Nuchim Dossik and Sine Lee Dossik, his wife, of the respective ages of 67 years and 65 years; and the said corporation, before the said transportation and bringing into this country as aforesaid the said aliens, received and collected of and from the said Nuchim Dossik, at Bremen, in Germany aforesaid, for the passage money of himself and his said wife to this country as aforesaid, one hundred and eighty-four rubles; and also at Bremen aforesaid, before the embarkation and departure of the said aliens from Germany aforesaid to this country aforesaid, the said corporation received and collected of and from the said Nuchim Dossik the additional sum of one hundred and fifty rubles for the return passage of said aliens from the said United States to Germany aforesaid, for which last-named sum the said corporation issued to the said Nuchim Dossik, in the German language, a passage order, so called, in the words and figures following, namely:

Postdampfer.

No. 2137.

Norddeutscher Lloyd, Bremen.

Passage-Anweisung.

New York—Bremen.

Herr Nuchim & Sine Sec Dossik hat	} das Fahrgehd zur Reise im Zwischendeck mit Mark 320.—entrichtet.
fur zwei Erwachsene uber 12 Jahre	
" ---- Kind von 1—12 Jahre	
" ---- Kind unter 1 Jahr	

Inhaber dieses Billets hat sich bei den General-Agenten, Herren Oelrichs & Co. in New York, No. 2 Bowling Green, anzumelden.

Die Beforderung findet auf Grund der von der Gesellschaft festgestellten Ueberfahrts-Bedingungen statt.

Bremen, 25 Nov. 1910.
Auftrag von F. Missler

Norddeutscher Lloyd
Abtheilung Passage.
J. Weiner.

And the said passage order in the English language is of the following significance and meaning, that is to say:

No. 2137.

North German Lloyd.

Passage Order.

New York—Bremen.

Mr. Nuchim and Sine Sec Dossik has paid for two
 over 12 years of age }
 child 1-12 years } the passage money in steerage with 320 marks.
 child under 1 year. }

7 The holder of this ticket should apply to the General Agents in New York, Messrs Oelrichs & Company, No. 2 Bowling Green.

The transportation is done on the ground of the prescribed transportation rules of the company.

Bremen, November 25, 1910.

Order of F. Missler.

North German Lloyd
 Passage Department
 Weiner.

And the said aliens, Nuchim Dossik and Sine Lee Dossik, his wife, were brought into this country as aforesaid by the said defendant in violation of law, and were ordered to be deported to Germany, aforesaid, by competent authority, as likely to become a public charge, by reason of senility and inability to make a living.

And the said one hundred and fifty rubles, on the said sixteenth day of December, in the year of our Lord one thousand nine hundred and ten, after the aforesaid bringing into this country of the said aliens, and while the said aliens were in the United States contrary to law and liable to deportation to Germany aforesaid in and upon the said steamship "Rhein," then and there belonging to the said corporation, or in and upon some other vessel owned and operated by the said defendant, were still held and retained in the possession of the said "Nord Deutscher Lloyd" up to the time of the filing of this indictment in the said Circuit Court; the said defendant so holding and retaining the same and making charge thereof for the return of such aliens and being taken and continuously held by the said defendant, as security from the said aliens, for the payment of such charge for their return passage to Germany aforesaid, in violation and evasion of section nineteen of the immigration laws of the United States, approved February 20, 1907 (34 Stat., 898), whereby the said defendant became and was guilty of a misdemeanor and liable to the punishment prescribed by law.

And so the jurors aforesaid, on their oath aforesaid, do say, that the said "Nord Deutscher Lloyd," the aforesaid defendant, in manner and form and by the means aforesaid, at and within the said
 8 jurisdiction, on the sixteenth day of December, in the year of our Lord one thousand nine hundred and ten, unlawfully and wilfully did make charge for the return of aliens, so as aforesaid brought into this country in violation of law, and take security from them and keep and hold the same for the payment of such charge, then and there well knowing that such aliens had been brought to this country in violation of law, against the peace of the United

States and their dignity, and contrary to the form of the statute of the United States in such case made and provided. (Section 19, immigration act of February 20, 1907, 34 Stat. L., p. 898.)

HENRY A. WISE, *U. S. Attorney.*

(Endorsed:) U. S. Circuit Court. The United States of America vs. "Nord Deutscher Lloyd." Indictment. Making charge for return of alien and taking security for the payment of such charge. Immigration act of Feb. 20, 1907, 34 Stat. L., p. 898. Henry A. Wise, U. S. attorney. A true bill. John E. Fairchild, foreman. 1911, April 3. Filed demurrer. 1911, April 7. Opinion. Hand, J. Demurrer sustained and indictment quashed. U. S. Circuit Court, Southern District N. Y. Filed Mar. 3, 1911. John A. Shields, clerk.

9

Demurrer.

United States Circuit Court, Southern District of New York.

THE UNITED STATES OF AMERICA
against
 NORDDEUTSCHER LLOYD. }

And now comes Norddeutscher Lloyd, a corporation organized and existing under the free and Hanseatic city of Bremen, Empire of Germany, into court, and having heard the indictment read, says that the said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that it, the said Norddeutscher Lloyd, is not bound by the law of the land to answer the same, and this it is ready to verify; wherefore, for want of sufficient indictment in this behalf the said Norddeutscher Lloyd prays judgment, and that by the court it may be dismissed and discharged from the said premises in the said indictment specified.

CHOATE & LAROQUE,
Attorneys for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Apr. 3, 1911. John A. Shields, clerk.

10

Opinion.

United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
against
 NORD DEUTSCHER LLOYD, A CORPORATION, DEFENDANT. }

William S. Ball, for the United States.
 Joseph Laroque, for the defendant.

HAND, District Judge:

The defendant asserts and the Government does not deny that the act means to make criminal only such acts as occur within the

territory of the United States. It is therefore unnecessary to consider what would be the effect of an act which subjected to punishment a corporation doing business in our territory for acts occurring wholly in the territory of the city of Bremen. Such legislation would be clearly violative of the general principles of international law (*American Banana Co. v. United Fruit Company*, 213 U. S., 247), but whether it would be a matter for the court to say that it was void is not now up for consideration. The question is whether any act has occurred here which is within the words of the statute. Those words are: "shall make any charge for the return of any such alien, or shall take any security from him for the payment of such charge." The "security" intended is for the "charge," the "return" intended is a "deportation" under the act as an excluded alien. So much will, I believe, be conceded by both sides.

The allegations of the indictment may be paraphrased as follows: (a) That the defendant is a foreign corporation transporting passengers to and fro between this country and Germany; (b) that on a day mentioned it brought two aliens from Bremen into the port of New York; (c) that theretofore and at Bremen the defendant collected of the aliens passage money and return passage money, for the latter giving a receipt exchangeable for a return ticket; (d) that the aliens were brought in in violation of law and are within the excluded classes; (e) that the defendant still holds and retains the return passage money, "making charge thereof for the return of such aliens, and being taken and continuously held by the said defendant as security . . . for the payment of such charge." It is very difficult to understand what the pleader means by the last words, for the defendant could hardly at once make charge for the return by retaining the rubles and be taking them as security for such a charge. I shall construe the words as adding nothing to the substantial allegations of the "charge," but as asserting that the defendant is holding the rubles as security for a future "charge." Stripped, therefore, of all verbiage, the indictment charges only that the defendant at Bremen collected return passage money from proposing immigrants, who were in fact within the excluded classes, and that it afterwards brought them to the port of New York, and knowing of their proposed deportation holds the money as security for a charge to be made for deportation. The questions raised are therefore, first, whether in doing so the defendant "charged" the aliens in New York for a return passage, and second, whether, in New York, it "took security" for such a charge.

This first question has two aspects: First, whether the defendant at any place "charged" the aliens within the terms of the act, and second, whether such a charge took place in New York. It is certainly true that the defendant at Bremen charged the aliens for a return-passage and that the next return passage of the aliens will be

under order of deportation. Unless, therefore, the statute requires that the forbidden "charge" must be made with intent to apply to a return under deportation, the indictment alleges a crime committed at Bremen. I think, however, that the statute does require such an intent, and that merely to take prepayment of return passage money from an alien subsequently excluded is clearly not within the statute, unless the return contemplated was a return under deportation. A contrary construction would involve the construction that the charge is "for" the return under deportation, though no one so supposes at the time. The word "charge" normally involves the idea that the charging party has in mind apportioning the sum charged against a specific item, and unless the item be a return under deportation he can hardly be said to have charged "for" such a return. In this respect, therefore, the indictment is deficient from any point of view. Nor is it enough, even though from the allegations it might be inferred evidentially that the defendant entertained such an intention, for no indictment may lay only the evidence, from which the necessary allegations shall be inferred. The eventual facts must themselves be stated, and this indictment lacks any statement that the charge made at Bremen was for a return under deportation.

13 But that is only one difficulty, because even if there had been adequate allegation of a charge for "such return," the only charge took place at Bremen. If, because of the subsequent deportation, the defendant at New York insists upon taking up the receipt, or upon cancelling the aliens' right to a return passage, or in any other way changing his rights under the receipt, then perhaps it charges the aliens here. That question is, however, not raised by any allegation in this indictment, for the defendant has done nothing in our territory but bring in the aliens. However, the Government says that this is a continuing offense and that it was completed here. *Armour & Co. v. U. S.*, 209 U. S., 56. No doubt Congress could make it an offense to bring in an alien of the excluded classes whose passage had been prepaid and punish a company for doing so. *U. S. v. Craig*, 28 Fed. R., 795; *U. S. v. Laverello*, 149 Fed. R., 297. Whether that would be strictly a continuing offense or not is not important, for so much of it as happened here would in any case be sufficient to justify the action of Congress. But that is not what Congress has in fact forbidden, unless it can be said that the defendant is continuously charging the aliens for their return passage every moment from the time the money is received until they return. I do not mean that any difficulty arises from the whereabouts of the money, for it would be enough if the defendant took up the receipt in New York, no matter where the money may be. The trouble is rather that to interpret the word "charge" as a continuing act is to introduce a fiction and to violate its ordinary, and so its proper, meaning. The word means some overt act by which the charging party manifests his purpose to demand the money charged from the party charged; it does not include the subsequent relations which are consequences of the

14

act. In short, it is not a legal relation, which continues wherever the two parties may come. For instance, we should all recognize the unreality of saying that a man was charged for goods sold, not only where the bargain was made and the charge entered, but at all other places where he went before he had paid for them. Yet there can be no continuing offense here, unless we assume that the charge is being made wherever the aliens come till the whole matter is finally settled or discharged. While the question is, after all, only of the meaning of words, the surest way to miss their meaning is to engage in casuistical analyses of their logical implications.

I have assumed throughout, as I said at the outset, that the added words, "making a charge thereof," are not to be construed as alleging that the defendant has done any act in New York but fail to give up the rubles after knowing that the deportation was ordered, and that, so far as its acts are concerned, it had not yet committed itself towards the aliens in regard to a charge for the return passage. That was the way in which the case was argued, and moreover, if the indictment means to rely upon such an allegation, it should specify what are the acts in New York which constitute a charge.

The second question is whether the defendant in New York has taken security for such a charge. The allegation is that it now "retains" the money after the aliens have reached New York and that, as I have said, is a good enough allegation of retaining it in New York, though the rubles never passed out of Bremen and were never meant to. Now, the indictment squarely alleges that the defendant retains the rubles as security for the deportation charges, and

15 that therefore eliminates the first point raised in regard to the "charge," and raises the single question whether to "retain" the security is to "take" it under the act. Granted that retaining presupposes some form of previous acceptance and that any kind of acceptance is a taking, the real point is that the taking is over when the taker has got possession of the thing taken. His subsequent retention is in no sense a continuous repetition of his original taking, and it is only to abuse words to say so. Just as in the matter of the "charge," the contention of the Government confuses the results of the act forbidden with the act itself. The only even remote analogy that I can think of is the rule that a thief commits larceny in every county into which he carries the stolen goods, but aside from the historical reasons for that rule, which make it no safe basis of general analogy, even that depends upon the carriage of the goods from place to place. I can see no more reason to say that the defendant takes security in New York when the alien arrives here than to say that a trespasser *de bonis asportatis* commits a new trespass in every place to which his victim or he himself may subsequently come.

The real strength and the only strength of the position is that there is here disclosed a very easy way of avoiding an equitable provision of the immigration act. Whether it is used or not, it is an obvious way of avoiding a perfectly proper provision which puts

on the steamship companies the risk of importing aliens within the excluded classes. Certainly that was the purpose of Congress, and this is an ingenious way of circumventing that purpose, which it is unfortunate that the law does not meet. However, if the expressed intent of Congress has not anticipated the possible inventions
 16 to defeat its purpose, while the purpose may help us to read the words, the words in the end can be the only vehicle of the intent. The court, even in a good cause, may not impose on words a meaning that they will not bear.

Demurrer sustained and indictment quashed.

L. H., U. S. J.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed Apr. 7, 1911. John A. Shields, clerk.

17

Order sustaining demurrer.

At a stated term of the Circuit Court of the United States for the Southern District of New York, held at the United States courthouse and post-office building, in the Borough of Manhattan, city, county, and Southern District of New York, for the trial of criminal causes, on the 5th day of May, 1911.

Present: Hon Learned Hand, Judge.

THE UNITED STATES OF AMERICA
against
 NORDDEUTSCHER LLOYD, DEFENDANT.

An indictment having been returned herein, and filed in the office of the clerk of this court on the third day of March, 1911, and a demurrer having thereafter and on the third day of April, 1911, been interposed thereto, and the said demurrer having come up to be heard, and after hearing William S. Ball, Esq., on behalf of the Government, and Joseph Larocque, Esq., for the defendant, and after reading the indictment and demurrer aforesaid, and due deliberation having been had, it is

Ordered that the said demurrer be, and the same hereby is, sustained, and the said indictment is hereby held to be insufficient, null, and void, and ordered to be quashed.

LEARNED HAND, U. S. Judge.

(Endorsed:) Copy received. May 4, 1911. Choate & Larocque, attys. for deft. U. S. Circuit Court, Southern District N. Y. Filed May 5, 1911. John A. Shields, clerk.

Judgment.

United States Circuit Court, Southern District of New York, in the
Second Circuit.

THE UNITED STATES
v.
NORD DEUTSCHER LLOYD. }

An indictment having been found against the above-named defendant and filed by the grand jurors of the United States for the Southern District of New York in the office of the clerk of the United States Circuit Court for the Southern District of New York, on the 3rd day of March, 1911, and thereafter the defendant having been arraigned thereon and having interposed a demurrer to the said indictment, and the issues raised by said demurrers having been duly argued and an order having thereafter been entered, to wit, upon the 5th day of May, 1911, sustaining the said demurrer, now,

Upon motion of Choate and Larocque, attorneys for the defendant, it is

Hereby ordered and adjudged that the said demurrer be, and the same is hereby, sustained, and that the said indictment be, and the same hereby is, quashed and dismissed and judgment entered this 5th day of May, 1911.

JOHN A. SHIELDS,
*Clerk, United States Circuit Court,
Southern District of New York.*

The entry of the above judgment is hereby consented to.

CHOATE & LAROCQUE,
Attorneys for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District N. Y. Filed
May 5, 1911. John A. Shields, clerk.

19 United States Circuit Court for the Southern District of New
York, in the Second Circuit.

THE UNITED STATES OF AMERICA
against
NORDDEUTSCHER LLOYD, DEFENDANT. }

Assignment of errors.

The United States, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred in the decision of the court herein, sustaining the demurrer to the indictment herein, to wit:

1. The court erred in sustaining the demurrer to the indictment herein.

2. The court erred in not overruling the demurrer to the indictment herein.

3. The court erred in holding, as matter of law, that the indictment herein was insufficient in law.

4. The court erred in not holding that the indictment herein sufficiently charges an offense by the defendant, in violation of the laws of the United States.

20 5. The court erred in holding, as matter of law, that where a corporation, operating a steamship line from a port in Europe to a port in the United States, transports upon one of its steamships from a port in Europe to a port in the United States an immigrant, or third-class passenger, from whom it has collected, and at the time of bringing said immigrant into the United States holds, a sum of money as a guaranty of the payment of the charges for carrying said immigrant back to Europe in the event such immigrant is excluded from the United States or denied entry thereto by the immigrant officials of the United States, that such acts do not constitute a violation of section 19 of the immigration act (act of February 20, 1907. 34 Stat., part 1, page 898).

6. The court erred, as matter of law, in not holding that where the owner of a steamship receives upon said steamship an alien at a port in Europe, and at the same time receives from said alien a sum of money to defray his expenses of return in the event he is excluded or denied admission to the United States, and transports said alien from said port in Europe to a port in the United States, that such offense is a continuing offense, and when said steamship arrives within the jurisdiction of the United States the continued holding of said sum of money is a violation of section 19 of the aforesaid statute.

21 7. The court erred, as matter of law, in not holding that the offense charged in the indictment was within the jurisdiction of the courts of this country, being a continuing offense; and although the act was set in motion in Germany, the force behind it extended its impetus to the port and Southern District of New York, where, under section 19 of the immigration act, it became punishable.

8. The court erred in entering the order herein on the 5th day of May, 1911, sustaining the demurrer to the indictment herein.

And the United States aforesaid, plaintiff in error, prays that the order aforesaid, for the errors aforesaid and the other errors in the record and proceedings herein, may be reversed and altogether held for nothing, and that the plaintiff in error may be restored to all things which it has lost by reason of said order, and that the Circuit Court be directed to vacate and set aside said order and the

judgment entered thereon, and to compel the defendant in error to plead to the indictment herein.

Dated, New York, May 5th, 1911.

HENRY A. WISE,

United States Attorney for the Southern District of New York.

(Endorsed:) Copy received May 6, 1911. Choate & Larocque. U. S. Circuit Court, Southern District N. Y. Filed May 5, 1911. John A. Shields, clerk.

22 *By the honorable Learned Hand, one of the judges of the Court of the United States for the Southern District of New York, in the Second Circuit, to Nord Deutscher Lloyd, greetings:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at the Capitol, in the city of Washington, in the District of Columbia, on the 1st day of June, 1911, pursuant to the writ of error filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, in which the United States of America is appellant and you are appellee, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in this behalf.

Given under my hand in the Borough of Manhattan, in the city of New York, in the district and circuit above named this 5th day of May, in the year of our Lord one thousand nine hundred and eleven, and of the independence of the United States the one hundredth and thirty-fifth.

LEARNED HAND,

Judge of the Court of the United States for the Southern District of New York, in the Second Circuit.

23 (Indorsed:) (Original.) U. S. Circuit Court, Southern District of New York. The United States versus Nord Deutscher Lloyd. Citation. Henry A. Wise, United States attorney, attorney for petitioner. Service of a copy of the within is hereby admitted. New York, May 5, 1911. Choate & Larocque. U. S. Circuit Court, Southern District, N. Y. Filed May 5, 1911. John A. Shields, clerk.

(Indorsement on cover:) File No. 22687. S. New York, C. C. U. S. Term No. 611. The United States, plaintiff in error, vs. Nord Deutscher Lloyd. Filed May 20th, 1911. File No. 22687.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 611.
<i>v.</i>	
NORD DEUTSCHER LLOYD.	

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.*

MOTION TO ADVANCE.

Comes now the Solicitor General and moves the court to advance this case and assign it for hearing at an early date during the present term.

The writ of error in this case was sued out by the United States (R., 1) under the provisions of the criminal appeals act of March 2, 1907 (34 Stat., 1246), to review a judgment of the Circuit Court sustaining a demurrer to and quashing the indictment (R., 5-9).

The indictment (R., 2-5) charges that the defendant is a foreign corporation engaged in the transportation of passengers between Germany and the United States; that on a day mentioned it brought two aliens from Bremen into the port of

New York; that theretofore at Bremen it collected from the aliens their passage money and return passage money, for the latter giving a receipt exchangeable for a return ticket; that the aliens were brought into this country in violation of law and are within the excluded classes; that the defendant still holds and retains the return passage money, "making charge thereof for the return of such aliens," said sum "being taken and continuously held by the said defendant, as security from the said aliens, for the payment of such charge for their return passage to Germany," in violation of the immigration act of February 20, 1907 (34 Stat., 898).

Section 19 of the act above mentioned (34 Stat., 898, 904) requires "That all aliens brought to this country in violation of law shall, if practicable, be immediately sent back to the country whence they respectively came on the vessels bringing them," and provides that "if any master, person in charge, agent, owner, or consignee of any such vessel shall * * * make any charge for the return of any such alien, or shall take any security from him for the payment of such charge, such master, person in charge, agent, owner, or consignee shall be deemed guilty of a misdemeanor and shall, on conviction, be punished by a fine of not less than three hundred dollars for each and every such offense."

The Government contended that by receiving and retaining the return passage money a continuing

offense completed in this country was committed by the defendant in violation of the statute above mentioned, but the Circuit Court, sustaining the demurrer, held that the defendant had not at any place, in violation of the provisions of the statute in question, made any charge for the return of the aliens under orders of deportation, and that it had not in this country taken security from them for the payment of such a charge. (R., 5-9.)

The Secretary of Commerce and Labor states that his department, in the enforcement of the immigration laws, is embarrassed by this decision, and that such a construction of the statute renders its provisions practically nugatory. It is deemed important that the questions involved should be authoritatively decided at an early date.

This motion to advance is therefore respectfully submitted.

FREDERICK W. LEHMANN,
Solicitor General.

WILLIAM R. HARR,
Assistant Attorney General.

NOVEMBER, 1911.

**BRIEF
FOR
THE
UNITED
STATES**

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 611.
v.	
NORD DEUTSCHER LLOYD.	

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.*

BRIEF OF THE UNITED STATES.

STATEMENT OF CASE.

This is a writ of error under the Criminal Appeals Act (34 Stat., 1246) to review a judgment of the Circuit Court sustaining a demurrer to and quashing an indictment against the defendant in error.

The indictment is based upon section 19 of the immigration act of February 24, 1907 (34 Stat., 898), which reads as follows:

SEC. 19. That all aliens brought to this country in violation of law shall, if practicable, be immediately sent back to the coun-

try whence they respectively came on the vessels bringing them. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came; and if any master, person in charge, agent, owner, or consignee of any such vessel shall refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens, or shall fail to detain them thereon, or shall refuse or fail to return them to the foreign port from which they came, or to pay the cost of their maintenance while on land, *or shall make any charge for the return of any such alien, or shall take any security from him for the payment of such charge*, such master, person in charge, agent, owner, or consignee shall be deemed guilty of a misdemeanor and shall, on conviction, be punished by a fine of not less than three hundred dollars for each and every such offense; * * *.

The indictment alleges, in substance, that the Nord Deutscher Lloyd is a German corporation, with an office in New York, owning, operating, and managing a trans-Atlantic line of steamers carrying passengers and freight from Germany to this country; that on December 16, 1910, it transported and brought into the United States at the port of New York upon its steamship "Rhein" two aliens, Nuchim Dossik and his wife, Sine Lee Dossik, aged, respectively, 67 and 65 years; that the defendant

corporation had received and collected from said Nuchim Dossik at Bremen, Germany, the passage money for himself and wife to this country, amounting to 184 rubles, and that also, at Bremen, before the embarkation of said aliens, the defendant collected of Nuchim Dossik the additional sum of 150 rubles for the return passage of said aliens from the United States to Germany, for which sum the defendant issued to Nuchim Dossik an order upon its agent in New York for their return passage from New York to Bremen. (R., 3, 4.)

The indictment further alleges that Nuchim Dossik and his wife were brought to this country by the defendant in violation of law, and were ordered to be deported to Germany, as likely to become a public charge by reason of senility and inability to make a living. (R., 4.)

It is further alleged that the 150 rubles, taken as security for the return passage of said aliens, on said 16th day of December, 1910, after the bringing of said aliens into the country as aforesaid, and while they were in the United States contrary to law and liable to deportation to Germany upon said steamship "Rhein"—

were still held and retained in the possession of the said "Nord Deutscher Lloyd" up to the time of the filing of this indictment in the said Circuit Court; the said defendant so holding and retaining the same and making charge thereof for the return of such aliens and being taken and continuously held by the said defendant, as security from

the said aliens, for the payment of such charge for their return passage to Germany aforesaid, in violation and evasion of section nineteen of the immigration laws of the United States, approved February 20, 1907.

The indictment then specifically charged that—
the aforesaid defendant, in manner and form and by the means aforesaid, at and within the said jurisdiction, on the sixteenth day of December, in the year of our Lord one thousand nine hundred and ten, unlawfully and wilfully did make charge for the return of aliens, so as aforesaid brought into this country in violation of law, and take security from them and keep and hold the same for the payment of such charge, then and there well knowing that such aliens had been brought to this country in violation of law, etc. (R., 4.)

The defendant by demurrer challenged the sufficiency of the indictment, and the Circuit Court, in an opinion by Judge Hand, sustained the same and directed the indictment to be quashed. (R., 5, 9.)

ARGUMENT.

I.

The manifest purpose of the defendant corporation in taking, at Bremen, the 150 rubles as security for the return passage of Nuchim Dossik and his wife, was to evade the provisions of section 19 of the immigration act placing the expense of the maintenance and return of aliens unlawfully brought to the United States upon the owners of the vessels on which they respectively came, and prohibiting under penalty the owner of such vessel from making any charge for the return of such an alien or taking any security from him for the payment of such charge. The vital question, therefore, is whether, as held by the Circuit Court, the defendant *has* discovered "a very easy way of avoiding an equitable provision of the immigration act." (R., 8.)

The Government contends that the statute should be construed so as to prevent this plain and palpable attempt to evade it; that the transactions charged are clearly within the spirit and purpose of the act; and that it is not improper to construe even a penal statute so as to embrace things manifestly within the purpose of the legislature.

We have here an attempt by the defendant corporation to do the very thing forbidden by the statute, namely, to make a charge for the return voyage of the aliens, if ordered deported, by taking security therefor. Unless the indictment be sustained, the charge will be made, and the purpose of the statute defeated. The presumption of an intent to violate the statute was strong enough when the defendant took the 150 rubles at Bremen prior to the embarkation of the aliens for the United States; it became conclusive when the defendant, after the immigration authorities refused to admit the aliens, retained the security so taken.

The rule that penal statutes are to be strictly construed is qualified by the further one that such statutes are not to be so strictly construed as to defeat the obvious intention of the legislature.

United States v. Wiltberger, 5 Wheat., *76, *95.

American Fur Co. v. United States, 2 Pet., *358, *367.

United States v. Morris, 14 Pet., *464, *475.

United States v. Hartwell, 6 Wall., 385, 395.

United States v. Wong Kim Ark, 169 U. S., 649, 653.

In the case at bar, the inhibition in regard to the making of any charge for the return of any alien unlawfully brought to this country, or the taking of any security from him for the payment of such charge, is to be read in the light of the preceding

requirement that the cost of the maintenance of such aliens while on land, as well as the expense of their return, shall be borne by the owner or owners of the vessels on which they respectively came. So read, it should be held to cover a case of this kind, where the result of the action of the defendant is actually to take security for the return of an alien unlawfully brought to this country.

The statute does not in terms limit its inhibition upon the making of a charge or the taking of security for the return of an alien unlawfully brought to the United States to a "making" or a "taking" after the alien has been brought to this country and an order of deportation issued. A previous "making" of a charge or "taking" of security is easily within the language and absolutely within the purpose of the act, which is to compel steamship companies bringing aliens to the United States to take every precaution to insure compliance with the requirements of the immigration laws. The statute says that no charge shall be made for the return of an alien who has been unlawfully brought to the United States or security taken for any such charge. Can it be denied that, as a matter of fact, these aliens were unlawfully brought to the United States and that the defendant company has taken security for their return passage?

It is not improper to say that the statute covers a taking of security for a return charge made previous to the bringing of the aliens into this country,

where the intent to defeat the manifest purpose of the statute exists, or to treat the retention of the security, under such circumstances, as a "taking."

As pointed out by Mr. Justice Holmes, in delivering the opinion of the Court in *Bailey v. Alabama* (211 U. S., 452, 454), "presumptions of intent from somewhat remote subsequent conduct are not unknown to the common law," citing *Commonwealth v. Rubin* (165 Mass., 453), where it was held that a defendant who had received a horse with felonious intent in one county and carried it into another could be indicted for larceny in the latter county, felonious intent being inferred from the subsequent conversion. That case contains an instructive discussion of the presumption of original intent from subsequent conduct by which an abuse of lawful authority may render a person a trespasser *ab initio*.

In the present case, the only reason for the action of the steamship company in taking the 150 rubles from Nuchim Dossik at Bremen was to secure itself in the event he and his wife were refused admission into this country. It is true no offense was committed at that time, and that, if they had been admitted, no offense would have arisen. But when, upon their rejection, the money was retained, the offense was complete. Then, the company was in the position of having taken security for the return of an alien unlawfully brought to the United States.

II.

The opinion of the Circuit Court proceeds upon the assumption that the "act means to make criminal only such acts as occur within the territory of the United States" (R., 5, 6), and cites the case of *American Banana Co. v. United Fruit Co.* (213 U. S., 347) as authority for the proposition that "an act which subjected to punishment a corporation doing business in our territory for acts occurring wholly in the territory of the city of Bremen" "would be clearly violative of the general principles of international law." (R., 6.) It then proceeds to hold that no charge was made for the return of the aliens or security taken for such charge in New York.

The Government does not concede that the statute only undertakes to punish a charge made or security taken within the territory of the United States. To so hold would be to nullify the statute entirely, because no charge need be made for the return passage of an alien until after he had departed from the United States. The common signification of the word "charge" is that it is a price fixed or demanded for a service rendered. (Webster's Dic.; 5 A. & E. Ency. Law, 2d ed., p. 889.) But the statute is broad enough to cover a charge made or security therefor taken before the service is rendered.

Properly viewed, even where the charge is made or the security taken abroad for the return of

an alien unlawfully brought to the United States, a substantial part of the transaction occurs within our jurisdiction. The service for which the charge is made or the security taken is performed partly within the territorial waters of the United States and partly on the high seas, either of which would be sufficient to give to this country jurisdiction of acts inhibited as contrary to its policies with respect to immigration or foreign commerce. (*American Banana Co. v. United Fruit Co.*, 213 U. S., 355, 356.) As in the case of the provisions of the Elkins Act, prohibiting the giving of rebates and authorizing prosecution in any district through which the transportation may have been conducted (*Armour Packing Co. v. United States*, 209 U. S., 56, 73-74), may it not be said here that the transportation contrary to the inhibitions of the statute is an essential part of the offense? But, independent of this, the statute would apply, and the authority of Congress be upheld, as to acts occurring in a foreign jurisdiction which are intended to interfere with the legitimate operations of the Government or to defeat the exercise of its rightful powers. (*American Banana Co. v. United Fruit Co.*, 213 U. S., 356.)

In *United States v. Craig* (28 Fed., 795) an action was brought to recover a penalty for the importation of an alien contract laborer in violation of the act of Congress of February 26, 1885. In overruling the contention that Congress had no

power to punish the doing of an act in a foreign country, Mr. Justice Brown, then district judge, said (p. 800):

Now, the act of entering the territory of the United States or of migrating, in the language of the statute, must be done within some district of the United States; and the question arises whether, assuming that the contract was made and the transportation prepaid, or other assistance given in a foreign country, the completion of the offense within the United States is not sufficient to give our courts jurisdiction. The answer to this question must be in the affirmative. If a statute create an offense to the commission of which two acts are essential, one of which it is contemplated will be done outside and the other within the State, an indictment will lie in that jurisdiction within the State in which the domestic part of the transaction is performed; for otherwise the statute is rendered wholly inoperative. (I Bish. Crim. Law, 556, 559.) * * * There is a recognition of this principle in Revised Statutes, section 731, in which it is provided that "when any offense against the United States is begun in one judicial district, and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, determined, and punished in either district."

Nor is it necessary that the defendant should have been personally present at the

time the foreigner entered the United States, to make such entry an element of his offense, so long as he instigated or assisted the act. The locality of a crime is not necessarily in the same jurisdiction with the personal presence of him who commits it. (I Bish. Crim. Law, sec. 556.)

In *United States v. Lavarrello* (149 Fed., 297) the defendant was indicted for the violation of the act of August 2, 1882 (22 Stat., 186), which undertakes to regulate passenger accommodations upon all vessels bringing immigrants to the United States. In upholding this statute, the Circuit Court for the Northern District of New York said (p. 298):

The most important question raised by the demurrer relates to the power of Congress to make penal an omission by a foreign vessel to provide tables and seats, at regular meals, for passengers bound to the United States, and actually brought into a port of landing. However vaguely or ineffectively Congress has exercised the power, it is considered that the power exists, and it is unnecessary in reaching this conclusion to follow the history of passenger acts from an early time in the last century, or the decisions pertaining thereto. * * * If it fails in this duty, the master entering upon the voyage and bringing the ship to port is punishable.

The passenger acts undertake to regulate matters wholly beyond the jurisdiction of Congress except

for the fact that the owners or masters of the vessels regulated bring themselves within our jurisdiction by attempting to introduce aliens into the country. So, here, the right to punish for a charge made or security taken in a foreign jurisdiction arises out of the fact that the master or owner of the vessel has unlawfully brought an alien to the United States and thus subjected himself to our jurisdiction, the inhibited acts, although committed abroad, being intended to defeat the purpose of our laws.

For the reasons stated, the judgment of the Circuit Court should be reversed.

Respectfully submitted.

WILLIAM R. HARR,
Assistant Attorney General.

O



13

RECEIVED SUPREME COURT, U. S.
FILED

JAN 8 1917

JAMES M. McGERNEY,

NO. 611.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1916.

THE UNITED STATES

Plaintiff in Error

NORDEUTSCHER LLOYD

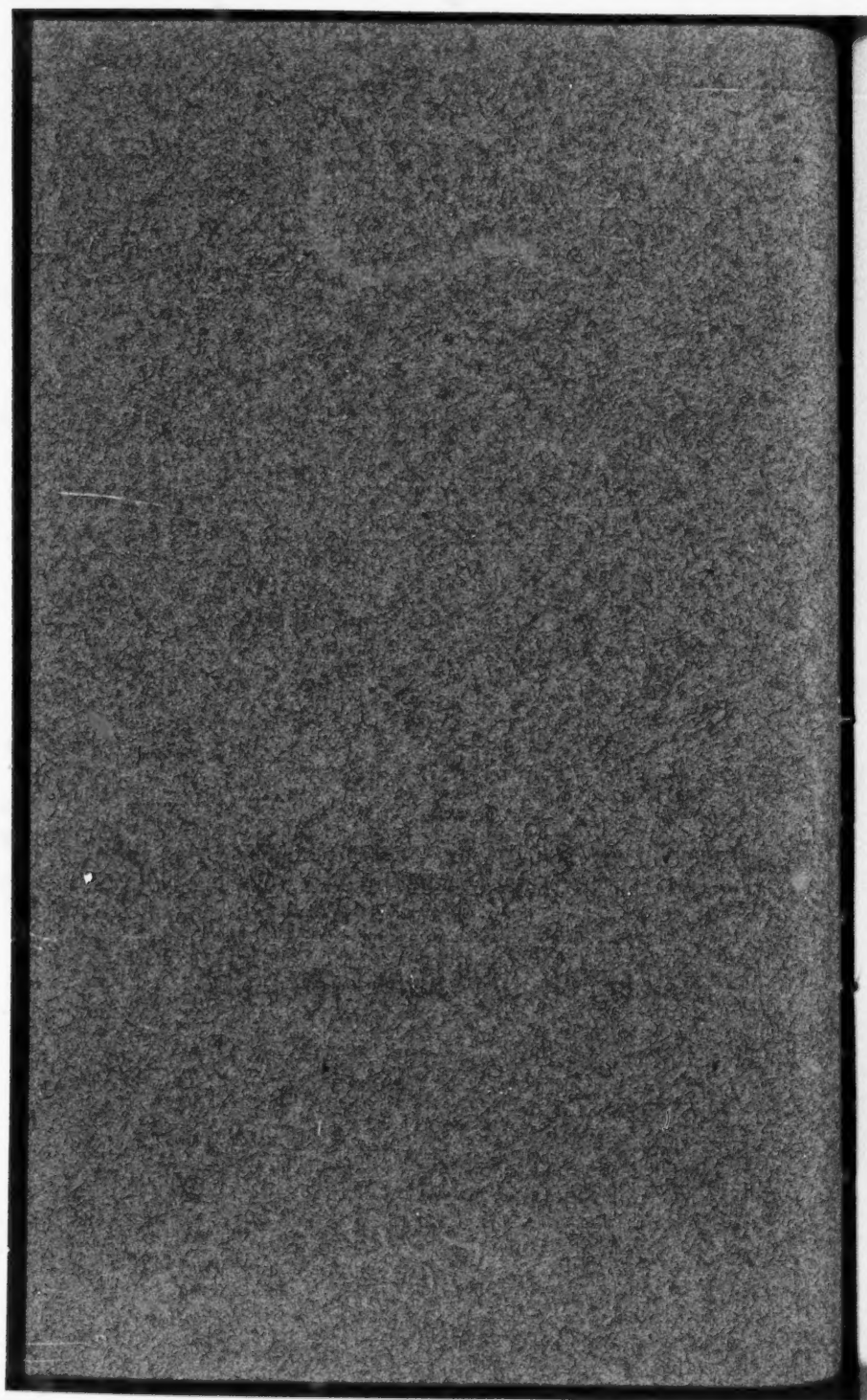
Defendant in Error

ON WRIT OF HABEAS CORPUS OF THE UNITED STATES FOR
THE DEFENSE OF THE UNITED STATES

BRIEF FOR DEFENDANT IN ERROR

JOSEPH F. LARSON

Of Counsel



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1911.

THE UNITED STATES,
Plaintiff in Error,

vs.

NORDDEUTSCHER LLOYD,
Defendant in Error.

No. 611.

**IN ERROR TO THE CIRCUIT COURT
OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF
NEW YORK.**

BRIEF FOR DEFENDANT IN ERROR.

Statement of Case.

This is a writ of error under the Criminal Appeals Act (34 Stat., 1246) to review a judgment of the Circuit Court sustaining a demurrer to and quashing an indictment against the defendant in error.

The indictment is based upon Section 19 of the Immigration Act of February 20, 1907 (34 Stat. L., p. 898).

By the section in question it is made a misdemeanor, punishable by a fine of not less than \$300, for the master, person in charge, agent, owner or consignee of any vessel which has brought an alien into this country in violation of law to make any charge for the return of any such alien or to take any security from him for the payment of such charge.

The indictment sets forth that the defendant, a corporation organized and existing under the laws of the City of Bremen in the Empire of Germany, at said City of Bremen received and collected from one Newchim Dossik for the passage of himself and his wife to this country 185 rubles, *and also at Bremen, before the embarkation and departure of the said aliens from Germany to this country (the date not being specified), received and collected from said Dossik the additional sum of 150 rubles for the return passage of said aliens from the United States to Germany, issuing to the said Dossik a passage order which is set forth in the indictment*; that the said defendant steamship company still held and retained the said 150 rubles at the time of the filing of this indictment and that the said Dossik and his wife were brought into this country by the said defendant in violation of law and were ordered to be deported to Germany as likely to become a public charge by reason of senility and inability to make a living.

Stripped of its legal verbiage, the indictment charges the defendant, an alien corporation, with having committed a misdemeanor under §19 of the Immigration Law by selling to Dossik, at Bremen, a return passage order for himself and his wife and by retaining the money received at Bremen for such return order.

The argument of government counsel proceeds upon the assumption that "the manifest purpose of the defendant corporation in taking, at Bremen, the

150 rubles as security for the return passage of Nuchim Dossik and his wife, was to evade the provisions of section 19 of the Immigration Act," (government brief, p. 5), but no such purpose appears directly or by necessary implication from the allegations of the indictment.

The indictment alleges as follows (Rec. p. 3) :

"and also at Bremen aforesaid, before the embarkation and departure of the said aliens from Germany aforesaid to this country aforesaid, the said corporation received and collected of and from the said Nuchim Dossik the additional sum of 150 rubles for the return passage of said aliens from the United States to Germany aforesaid," * * *

While this allegation is not susceptible of the meaning ascribed to it by government counsel, we submit that it does fairly state what we understand to have been the actual transaction, viz., the sale of a return passage ticket to two passengers who intended to pay a brief visit to the United States.

ARGUMENT.

I.

The section in question does not apply to an act done by an alien corporation in a foreign country.

The section is penal and must therefore be strictly construed.

(a) The section provides: "That all aliens brought to this country in violation of law, if practicable, be immediately sent back to the country whence they respectively came on the vessels bring-

ing them." It is made a misdemeanor for the owner to make any charge for the return of "any *such* alien," or to "take any security from *him* for the payment of such charge." But to constitute a misdemeanor under this section the charge must be made or the security for the payment of such charge must be taken for the return of *such* alien; that is for the return of *an alien who has been brought to this country in violation of law*. The section has no application to the making of a charge or the taking of security *abroad* for the return of a person *who is about to embark at a foreign port* for the United States. To give the section any other interpretation would be a violation of its declared intent and a piece of judicial legislation.

(b) Even were it a question of doubt as to whether Congress intended to cover the case of a charge made or security taken from a person about to embark in a foreign country, the Court in construing the section would be bound to exclude such an interpretation.

While a country may treat some relations between its own citizens as governed by its own law in regions subject to no sovereign, like the high seas, or to no law recognized as adequate, the general rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where it is done.

A statute will, as a general rule, be construed as intended to be confined in its operation and effect to the territorial limits within the jurisdiction of the lawmaker, and words of universal scope will be construed as meaning only those subject to the legislation.

American Banana Co. vs. United Fruit Co., 213 U. S., 347.

In the case cited an action was brought by the plaintiff against the defendant to recover three-fold damages under the Sherman anti-trust law. The plaintiff was an Alabama, and the defendant a New Jersey corporation.

The complaint set forth facts tending to show a conspiracy to restrain trade and acts done in Costa Rica in furtherance of such conspiracy which if done in the United States would clearly constitute a violation of the Sherman anti-trust law.

The Circuit Court dismissed the complaint upon motion as not setting forth a cause of action. This judgment was affirmed by the Circuit Court of Appeals, and the case was then taken to the Supreme Court by writ of error. The Supreme Court affirmed the judgment below.

Mr. Justice Holmes, writing the opinion, said (p. 355) :

"It is obvious that, however stated, the plaintiff's case depends on several rather startling propositions. In the first place the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States and within that of other States. It is surprising to hear it argued that they were governed by the act of Congress.

"No doubt in regions subject to no sovereign, like the high seas, or to no law that civilized countries would recognize as adequate, such countries may treat some relations between their citizens as governed by their own law and keep to some extent the old notion of personal sovereignty alive" [Citing authorities] * * * "But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done (*Slater vs. Mexican National R. R. Co.*, 194 U. S., 120, 126) * * * For another jurisdiction, if it should happen to lay hold of the actor to treat him according to its own notions

rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other State concerned justly might resent" [Citing authorities].

And again, at page 357:

"'All legislation is *prima facie* territorial.'"

II.

The indictment cannot be sustained upon the theory that it charges the commission of a continuing offense.

The act which the indictment charges to be an offense had its inception and completion at Bremen, Germany.

This is not the case of an offense commenced within one jurisdiction and completed in another.

It was apparently the theory of the draftsman of the indictment that by stating that the 150 roubles were retained by North German Lloyd up to the time of the filing of the indictment, the case could be brought within the purview of Section 19, and that notwithstanding the fact that the original receipt of the 150 roubles was not illegal, the subsequent retention of the money after the aliens had been brought into this country was illegal; in other words, that the failure of North German Lloyd to surrender the money constituted a misdemeanor.

In answer to this contention we submit that the misdemeanor defined by Section 19 does not consist in an omission to perform a duty but in the commission of a prohibited act. The statute makes it a

misdemeanor for a shipowner to make a charge or take any security. It does not make it a misdemeanor for a shipowner to retain money or security received in a foreign jurisdiction. Furthermore, while the indictment does allege that the money in question was received and collected at Bremen, Germany, it does not allege that the said money was ever sent to this country or that it has ever been held or retained by the defendant within this jurisdiction.

The suggestion was made on the argument below that if the shipowner, after the immigrant had been ordered to be deported, had upon demand, refused to restore to him the money in question, such refusal might be construed as equivalent to the making of a charge within the meaning of the statute.

In answer to this suggestion we refer to the indictment, which does not allege any such demand or refusal.

But even if the indictment had alleged that the money was held or retained by the defendant in this jurisdiction, and that after the alien had been ordered to be deported a demand had been made upon the defendant for the return of said money, and such demand had been refused, we submit the indictment would still be fatally defective, because such a refusal would not constitute the making of a "charge" within the meaning of Section 19. The "charge" was made by the defendant at Bremen, when it sold the alien a return passage order. A refusal at New York to return the money could no more constitute the making of a new charge than a refusal to return money paid over the counter for goods could be considered the making of a new charge for such goods.

The whole case may be summed up in a few words. Section 19 does not make it a misdemeanor to make a charge or receive security from an alien

in a foreign country, or to bring into this country a non-admissible alien from whom money or security therefor has been received abroad for his return passage.

It seems clear that, by this legislation, the Congress intended to prohibit a shipowner from exacting from an alien, *who has been brought* to this country in violation of law, money for his return.

But if the statute had stopped there the shipowner might, when an alien had been brought into this country in violation of law and had been ordered to be deported, evade the operation of the statute by taking from him security for said charge instead of exacting from him a money payment, and therefore the further provision was inserted in the statute prohibiting the taking of any security from such alien.

If Congress had intended to make it a misdemeanor for a shipowner to retain moneys previously received abroad from an alien for his return passage, it could easily have done so in clear and concise terms.

None of the authorities cited by the learned Government counsel has any bearing upon the question at issue.

In *Armour Packing Co. v. United States*, 209 U. S., 56 (cited by Government counsel on page 10 of his Brief), the transportation of merchandise at a prohibited rate under the Elkins Act extended through several distinct districts, and the case could therefore properly be tried in any one of the districts.

Nor has the case of *United States v. Craig*, 28 Fed. Rep., 795 (cited on page 10 of Government Counsel's Brief), any applicability, for the Act of Congress there in question prohibited the importation of contract laborers, which was within the power of Congress, and the offense consisted in assisting such immigration, the offense not being com-

plete until such alien had entered the territory of the United States.

Nor is the case of *United States v. Lavarello*, 149 Fed. Rep., 297 (cited on page 8 of Government Counsel's Brief), in point, for there the statute in question defined a continuing offense.

III.

**The judgment of the Circuit Court
should be affirmed.**

JOSEPH LABOCQUE,
of Counsel for Defendant in Error.

January 8, 1912.

UNITED STATES *v.* NORD DEUTSCHER LLOYD.ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

No. 611. Argued January 12, 1912.—Decided February 19, 1912.

The object of § 19 of the Immigration Act of 1907, prohibiting the owners of vessels from making any charge or receiving any security for return passage of aliens brought to this country, was to carry out a policy of preventing the transportation of aliens within the excluded class by rendering it unprofitable instead of profitable for the vessel-owner.

While a statute has no extra-territorial force, and one cannot be indicted here for what he does in a foreign country, the making of a contract in a foreign country may, as in this case, create a condition operative in this country, under which acts of omission or commission can be punished here. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, distinguished.

A vessel-owner taking security in a foreign country for the return passage of aliens brought to a port of the United States violates § 19 of the Immigration Act of 1907, and the retention of the money in the United States for the return passage is an offense at the place where it is retained.

185 Fed. Rep. 158, reversed.

WRIT of error to review a judgment sustaining an indictment charging the defendant with taking security and making charge for the return passage of aliens unlawfully brought into the United States and ordered to be returned in pursuance of the Immigration Act of February 20, 1907.

The indictment charges that the Nord Deutscher Lloyd, a German corporation, operated a line of steamers between Bremen and New York, maintaining an office and place of business in both cities. On November 25, 1910, in Bremen, it sold tickets to two aliens entitling them to passage to New York and return. Before their embarkation the defendant collected from them 150 rubles for the return passage money in steerage. On arrival in New

York the aliens were ordered to be deported to Germany as likely to become public charges, because of senility and inability to make a living. On December 16, 1910, after the unlawful bringing into this country of said aliens, and while they were liable to deportation on the vessel by which they came, the said 150 rubles were still held and retained in possession of the defendant up to (April 3, 1911) the date of filing the indictment, "the defendant so holding and retaining the same and making charge thereof for the return of such aliens, and being taken and continuously held by the said defendant, as security from the said aliens, for the payment of such charge for their return passage to Germany aforesaid, in violation and evasion of § 19 of the Immigration Laws of the United States, approved February 20, 1907. The defendant . . . by the means aforesaid, at and within the Southern District of New York, on December 16, 1910, unlawfully and wilfully did make charge for the return of aliens, so as aforesaid brought into this country in violation of law, and take security from them and keep and hold the same for the payment of such charge, then and there well knowing that such aliens had been brought to this country in violation of law."

The court sustained the demurrer on the ground that the money was paid and received in Germany, and that the facts did not amount to a violation of § 19, which provides "That all aliens brought to this country in violation of law shall, if practicable, be immediately sent back to the country whence they respectively came on the vessels bringing them. The cost of their maintenance while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came." And ". . . If such owner shall refuse . . . to pay the cost of their maintenance while on land, or shall make any charge for the return of such alien, or shall take security from him for the

payment of such charge, such owner shall be guilty of a misdemeanor."

Mr. Assistant Attorney General Harr for the United States:

The manifest purpose of the steamship company in taking, at Bremen, the 150 rubles as security for the return passage of Nuchim Dossik and his wife, was to evade the provisions of § 19 of the Immigration Act.

The statute should be construed so as to prevent this plain and palpable attempt to evade it.

Unless the indictment be sustained, the return charge will be made, and the purpose of the statute defeated. The presumption of intent to violate the statute became conclusive when the defendant, after the immigration authorities refused to admit the aliens, retained the security so taken.

The rule that penal statutes are to be strictly construed is qualified by the further one that such statutes are not to be so strictly construed as to defeat the obvious intention of the legislature. *United States v. Willberger*, 5 Wheat. 76, 95; *American Fur Co. v. United States*, 2 Pet. 358, 367; *United States v. Morris*, 14 Pet. 464, 475; *United States v. Hartwell*, 6 Wall. 385, 395; *United States v. Wong Kim Ark*, 169 U. S. 649, 653.

The statute covers a taking of security for a return charge made previous to the bringing of the aliens into this country, where the intent to defeat the manifest purpose of the statute exists, or to treat the retention of the security, under such circumstances, as a "taking."

The statute does not only undertake to punish a charge made or security taken within the territory of the United States. To so hold would be to nullify the statute entirely, because no charge need be made for the return passage of an alien until after he had departed from the United States. The statute is broad enough to cover a

charge made or security therefor taken before the service is rendered.

The service for which the charge is made or the security taken is performed partly within the territorial waters of the United States and partly on the high seas, either of which would be sufficient to give to this country jurisdiction of acts inhibited as contrary to its policies with respect to immigration or foreign commerce. The statute applies, and the authority of Congress can be upheld, as to acts occurring in a foreign jurisdiction which are intended to interfere with the legitimate operations of the Government or to defeat the exercise of its rightful powers. *American Banana Co. v. United Fruit Co.*, 213 U. S. 356; *United States v. Craig*, 28 Fed. Rep. 795; *United States v. Lavarrello*, 149 Fed. Rep. 297.

The passenger acts undertake to regulate matters wholly beyond the jurisdiction of Congress except for the fact that the owners or masters of the vessels regulated bring themselves within our jurisdiction by attempting to introduce aliens into the country.

Mr. Joseph Larocque for defendant in error:

The section in question does not apply to an act done by an alien corporation in a foreign country. The section is penal and must therefore be strictly construed.

Even were it a question of doubt as to whether Congress intended to cover the case of a charge made or security taken from a person about to embark in a foreign country, the court in construing the section would be bound to exclude such an interpretation.

While a country may treat some relations between its own citizens as governed by its own law in regions subject to no sovereignty, like the high seas, or to no law recognized as adequate, the general rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where it is done.

A statute will, as a general rule, be construed as intended to be confined in its operation and effect to the territorial limits within the jurisdiction of the lawmaker, and words of universal scope will be construed as meaning only those subject to the legislation. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347.

The indictment cannot be sustained upon the theory that it charges the commission of a continuing offense.

The act which the indictment charges to be an offense had its inception and completion at Bremen, Germany. This is not the case of an offense commenced within one jurisdiction and completed in another.

While the indictment alleges that the money in question was received and collected at Bremen, Germany, it does not allege that the said money was ever sent to this country or that it has ever been held or retained by the defendant within this jurisdiction.

Section 19 does not make it a misdemeanor to make a charge or receive security from an alien in a foreign country, or to bring into this country a non-admissible alien from whom money or security therefor has been received abroad for his return passage.

Congress intended to prohibit a shipowner from exacting from an alien, who has been brought to this country in violation of law, money for his return.

If Congress had intended to make it a misdemeanor for a shipowner to retain moneys previously received abroad from an alien for his return passage, it could easily have done so in clear and concise terms.

None of the authorities cited by the learned government counsel has any bearing upon the question at issue.

MR. JUSTICE LAMAR, after making the foregoing statement, delivered the opinion of the court.

Section 19 of the Immigration Act of 1907 (February 20,

1907, 34 Stat. 898, 904, c. 1134), is not aimed at the aliens of the excluded class, but at the owners of vessels unlawfully bringing them into this country. The Government might in large measure protect itself by inspection, rejection and order of deportation, but it is purposed, also, as far as possible, to protect the alien. He might be ignorant of our laws and ought to be deterred from incurring the expense of making a passage which could only end in his being returned to the country from whence he came. This policy could best be subserved by securing the co-operation of the transportation companies, and to this end the statute required that they should not only maintain the aliens unlawfully brought by them into this country, but should take them back free of charge. In the absence of this last provision the company might well afford to accept as passengers those known or suspected to belong to the excluded class. It would receive from them their passage money from Europe to America. If they passed the inspection the transaction was ended. If they were deported the company would be at the trifling expense of maintaining them while here. But if it could charge and secure payment for the return passage, it would collect two fares instead of one. This would have made the transportation of an excluded alien more profitable than the carrying of one who could lawfully enter. This was so obvious that the statute not only required the cost of their passage to be borne by the transportation company, but prohibited the making of a charge, or the taking of security for the return passage, which might be collected or enforced at the end of the journey.

It is said, however, that no such charge was made in New York; that the indictment shows only the case of an ordinary sale of a round-trip steerage ticket from Bremen to New York, and that what was lawfully done in Germany cannot be punished as a crime in New York.

The statute, of course, has no extra-territorial opera-

tion, and the defendant cannot be indicted here for what he did in a foreign country. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347. But the parties in Germany could make a contract which would be of force in the United States. When, therefore, in Bremen, the alien paid and the defendant received the 150 rubles for a return passage they created a condition which was operative in New York. If, in that city, the company had refused to honor the ticket the alien could there have enforced his rights. In like manner, if by reason of facts occurring in New York, the statute operated to rescind the contract, the rights and duties of the parties could there be determined, and acts of commission or omission, which, as a result of the rescission, were there unlawful, could there be punished.

If, as argued, the company did nothing in New York except to retain money which had been lawfully paid in Germany, the result is not different, because, under the circumstances, non-action was equivalent to action. The indictment charges that on December 16, 1910, it was found that the aliens had been unlawfully brought into this country. The company at once was under the duty of taking them back at its own cost. Instead of returning to them the money previously received for such transportation, the defendant retained it up to the date of the indictment, April 3, 1911, with intent to make charge and secure payment for their passage to Bremen. This retention of the money, with such intent, was an affirmative violation of the statute. The company could not take the aliens back free of charge, as required by law, and at the same time retain the fare covering the same trip.

The demurrer admits that, with knowledge that it was bound to carry the excluded aliens back at its own cost, the defendant in New York made a charge, and retained the 150 rubles with intent to apply that money in satisfaction thereof. If that be true the defendant violated

METROPOLITAN CO. v. KAW VALLEY DISTRICT. 519

223 U. S.

Statement of the Case.

the statute within the Southern District of New York,
and can there be indicted and tried. The judgment must
therefore be

Reversed.